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August 17, 1999

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Federal Communications Commission
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Reply Comments
MM Docket No. 99-215
RM-9337
Mason, Texas

Dear Ms. Salas:

Transmitted herewith, on behalf of BK Radio, is an original and four (4) copies of its Reply Comments in MM Docket No. 99-215. Please contact the undersigned in the event the Commission has any questions with respect to the filing of these Reply Comments.

Sincerely,


Lee J. Heltzman
Counsel for
BK RADIO

Enclosure

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 17 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Mason, Texas)

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MM Docket No. 99-215
RM-9337

To: Chief, Allocations Branch

REPLY COMMENTS

BK Radio ("BK"), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding. In support of its position, BK submits the following:

The Commission Notice of Proposed Rule Making, DA 99-1142, released June 11, 1999 ("NPRM"), initiating this proceeding proposed the allotment of Channel 239C2 and Channel 273C2 at Mason, Texas, while allowing BK to amend its pending Mason application to Channel 239C2 without the loss of any cut-off protection. As proposed by the Commission, the allotment of these additional channels would eliminate the mutual-exclusivity between BK and the remaining two Mason applicants for Channel 249C2, Jayson D. Fritz and Janice M. Fritz ("Fritz") and Foxcom, Inc. ("Foxcom").

The Commission additionally noted in its NPRM that one additional channel, Channel 288C2, might be available for allotment at Mason for other expressions of interest upon finalization of the Report and Order in MM Docket 97-244. BK noted in its Comments, filed on July 28, 1999, that no party had sought review or reconsideration of the Commission Report and Order in MM Docket 97-244, and that, therefore, Channel 288C2 would now be available for allotment at Mason. BK's Comments supported the addition of Channels 239C2, 273C2 and 288C2 at Mason, Texas.

Other Comments have been filed by Fritz, Foxcom and Kent S. Foster (“Foster”). Foster has expressed his interest in applying for Channel 273C2 if it is allotted to Mason. Foster further notes that it has no objection to the additional of Channel 288C2 if necessary, to accommodate all current Mason applicants. Fritz supports the proposed allotment of Channels 273C2 and 239C2 so long as it is not required to amend its pending application for Channel 249C2 to one of those channels. Fritz does question the economic viability of allotting additional channels to the community of Mason, however it does not oppose the proposed allotment plan as long as it is not required to amend its application. Rather, Fritz requests that the Commission specify that Fritz’s application retain Channel 249C2.

Foxcom opposes allotting additional channels at Mason.¹ Foxcom challenges the Commission’s policy of resolving conflicts between applicants by providing a community with additional FM transmission service. Claiming that it is “unalterably opposed” to BK obtaining a new Class C2 channel, Foxcom also challenges the proposed allotment of Channel 288C2 at Mason. Foxcom claims that Channel 288C2 is not acceptable for technical reasons, because the proposal allegedly fails to provide full city-grade coverage of that community of license. It cites two Commission cases for the principle that the FCC will also assume a circular city-grade contour based on flat terrain when making allotments.²

It should initially be noted that, of the Commenters, neither Fritz nor Foster opposes the allotment of Channels 239C2, 288C2 and 273C2 to Mason. Foster expresses his interest in a new Channel 273C2, whereas Fritz restates its interest in receiving a grant of its application for

¹ A counterproposal filed by a Foxcom alter ego, Munbilla Broadcasting Corporation, has not yet been accepted by the Commission, and, accordingly, BK will not address that counterproposal in these Reply Comments.

² Foxcom cites Ft. Bragg, California, 6 FCC Rcd 5817 (1991) at n.1 and Broken Arrow and Bixley, Oklahoma and Coffeetown, Kansas, 3 FCC Rcd 6507 (1988).

Channel 249C2. Fritz's effort to question the wisdom of allotting additional channels to Mason on economic grounds must be rejected since the Commission, for good reason, does not examine the economic viability of adding channels when making new allotments. Nor is it the Commission's policy in these cases to direct which applicant will retain the rights to the original channel for which it has applied. If the two remaining Mason mutually-exclusive applicants are steadfast in their desire for Channel 249C2, then they have the absolute right to partake in an auction for that channel. Neither the Commission nor BK can force those applicants to make a wise decision. However, BK should not be penalized because an existing licensee, such as Fritz, desires to avoid additional competition in its market or a combative one such as Foxcom, wishes to keep BK from receiving a grant of its application even if it results in Foxcom failing to receive a Mason grant as well.

Foxcom's challenge to the Commission policy of attempting to resolve mutually-exclusive conflicts between applicants so as to provide communities with additional FM service is difficult to comprehend. The Commission's policy will only apply to those few existing mutually-exclusive applications which meet the Commission's policy. Left unexplained by Foxcom is why resolving conflicts and providing additional service to communities is a "highly questionable" policy.

Foxcom's technical argument is equally lacking in substance. Foxcom conveniently overlooks the fact that it was the Commission in its NPRM that suggested that, upon finalization of the Report and Order in MM Docket 97-244, Channel 288C2 could become available for allotment at Mason. NPRM at n.3. That Report and Order has become final and the channel is now available.

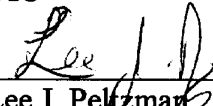
Moreover, this case is not completely dissimilar from Woodstock and Broadway, Virginia, 3 FCC Rcd 6398, 6399 (1988). BK is not necessarily requesting Channel 288C2 for additional applications. There are two other mutually-exclusive Mason applicants for Channel 249C2, either one of which may amend its application to Channel 288C2 now that Foster has expressed an interest in Channel 273C2. Thus, as in the situation prevailing in Woodstock, this new allotment may not be available for general application, but, instead, will be available only to a single applicant who would be able to amend its application to the new channel.

Accordingly, for the foregoing reasons, BK supports the proposals set forth in the Commission's NPRM, which would, *inter alia*, allot Channel 239C2 at Mason, Texas and permit the amendment of BK's application to that channel, while affording it cut-off protection.

Respectfully submitted,

BK RADIO

By:



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August 17, 1999

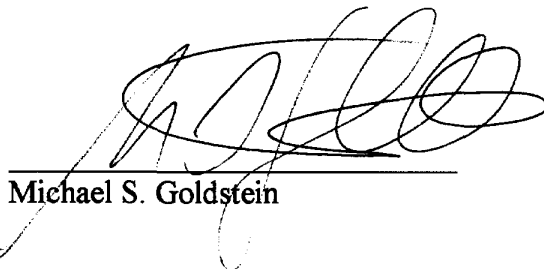
CERTIFICATE OF SERVICE

I, Michael S. Goldstein, secretary at the law firm of Shainis & Peltzman, Chartered, do hereby certify that I sent copies of the foregoing Reply Comments this 17th day of August, 1999, via first class U.S. mail, postage prepaid, to the following:

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